

STATE OF MICHIGAN
COURT OF APPEALS

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, UAW,

UNPUBLISHED
November 2, 1999

Charging Party-Appellee,

v

No. 211639
MERC
LC No. 95-000251

FRENCHTOWN CHARTER TOWNSHIP,

Respondent-Appellant.

Before: Murphy, P.J., and Gage and Wilder, JJ.

GAGE, J. (dissenting).

I respectfully dissent because I do not believe that respondent's violation of the MERC's brief filing rule warranted dismissal of its appeal.

In another context, specifically worker's compensation, Michigan courts have recognized the doctrine of substantial compliance with respect to an administrative agency's procedural requirements. *Dries v Chrysler Corp*, 402 Mich 78, 79; 259 NW2d 561 (1977); *Laudenslager v Pendell Printing, Inc*, 215 Mich App 167, 171; 544 NW2d 721 (1996). In determining whether to invoke the substantial compliance doctrine to excuse a technical rule violation, a court considers factors such as the length of delay in one's failure to comply, the reason for this delay and the existence of any resulting prejudice to the other party. *Laudenslager, supra*. The *Laudenslager* Court determined that the plaintiff's one-day delay in filing his appellate briefs with the Worker's Compensation Appellate Commission did not warrant dismissal of plaintiff's appeal absent any indication that the defendant would suffer some prejudice arising from the plaintiff's tardy filing. *Id.* at 171-173.

While I generally would require strict adherence to procedural time constraints, in light of precedent applying the substantial compliance doctrine in the context of worker's compensation procedural rules, I cannot ascertain a basis for distinguishing the MERC's procedural rules. I therefore would likewise apply the substantial performance doctrine in the context of the procedural requirements established by the MERC. In the instant case, respondent did not deliver its appellate brief to the

MERC on the brief's due date, as required by 1979 AC, R 423.472(2), but mailed its appellate brief to the MERC and to the charging party on the day the brief was due. As a result, the MERC and the charging party received the brief several days beyond the established due date. Considering (1) the short, several day delay in respondent's service of its appellate brief, (2) respondent's asserted reasons for the delay, which included respondent's loss of its case file, and (3) that absolutely no indication exists that the charging party suffered any prejudice waiting for several days for respondent's brief, especially when one considers the lengthy delay endured by the parties as they waited for the hearing referee's opinion,¹ I would find that respondent substantially complied with the MERC's filing requirement. I would conclude that the MERC therefore abused its discretion in dismissing respondent's appeal, the harsh sanction of dismissal being wholly disproportionate to the relatively small procedural infraction involved in this case. *Laudenslager, supra* at 172-173.

I would reverse.

/s/ Hilda R. Gage

¹ The hearing referee delivered his opinion more than one year after the last hearing date, and approximately nine months after the final deadline for submitting post-hearing briefs.